

UNITED STATES DISTRICT COURT

DEC 18 2010

for the

David J. Bradley, Clerk of Court

United States of America

v.

LOPEZ, Gerardo

Case No. C-10-1350M

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 12-17-2010 in the county of Brooks in the
Southern District of Texas, the defendant(s) violated:

Code Section

Offense Description

21 U.S.C. 841 (a) (1)

Knowingly, intentionally, and unlawfully possess
with the intent to distribute a controlled substance
in Schedule I, of the Controlled Substance Act of
1970, to wit: 25.75 kilograms of marijuana.

This criminal complaint is based on these facts:

See attachment

☒ Continued on the attached sheet.

Sworn to before me and signed in my presence.

Date:

December 18, 2010

City and state: Corpus Christi, Texas

Complainant's signature

Paul Stewart, Special Agent

Printed name and title

Judge's signature

B. Janice Ellington, U.S. Magistrate Judge

Printed name and title

Attachment "A"

Defendant:
LOPEZ, Gerardo

On December 17, 2010 I Border Patrol Agent Alejandro Pequeno was assigned traffic check duties along with Border Patrol Agent Jacob Acosta and his service canine "Goody" at the United States Border Patrol Checkpoint thirteen miles south of Falfurrias, Texas. At approximately 1835 hours a maroon in color Toyota Tundra pickup truck bearing Texas License Plates AB3-1474, approached the primary inspection lane for an immigration inspection of its passengers. BPA Pequeno asked the driver later identified as LOPEZ, Gerardo, if he was a U.S. Citizen. Lopez replied yes. BPA Pequeno then asked the passenger later identified as SALINAS, Victor Alberto if he was a U.S. Citizen, to which he replied "yes". BPA Pequeno asked LOPEZ if there was anyone else in the vehicle with them and he stated "no". BPA Pequeno asked LOPEZ to lower his rear driver's side window so that BPA Pequeno could further inspect the back seat due to the fact that the windows were tinted. LOPEZ lowered his rear window and then stated that they were going to Houston to visit his dad for a couple of days. BPA Pequeno asked LOPEZ where they were coming from and LOPEZ stated they just left McAllen. BPA Pequeno asked LOPEZ who the owner of the truck was and LOPEZ stated that the truck was his. While BPA Pequeno was conducting the inspection, agent Acosta was conducting a non-intrusive free air sniff of the exterior of the vehicle utilizing his service canine "Goody". Agent Acosta then advised that his service canine, "Goody" was alerting to the vehicle. Agent Acosta advised BPA Pequeno to refer the vehicle to secondary inspection due to his canine alert.

Once in secondary BPA Pequeno asked LOPEZ what time he had left McAllen, LOPEZ stated that they had just left about an hour before getting to the checkpoint. BPA Pequeno asked LOPEZ how he and SALINAS were related and LOPEZ stated that they were just friends from school. BPA Pequeno asked LOPEZ if he had recently done any work to the truck. LOPEZ stated that he had a tire blow out about a month ago and he had to use his spare tire. During this time BPA Pequeno noticed that LOPEZ continued to shift his seating position and continued to recant his story over and over. Agent Acosta performed a systematic search of the pickup truck while in secondary. During the systematic search of the truck canine "Goody" alerted and indicated to the spare tire located under bed of the pickup truck.

At this time LOPEZ was escorted into the checkpoint and temporarily detained for further questioning. During this time agent Acosta removed the spare tire for further inspection. Upon removing the tire agent Acosta noticed that the tire was clean as if it had recently been removed. Agent Acosta then used the "buster" to measure the density levels in the tire and received abnormal readings for a tire. Agent Acosta then cut the tire open revealing several bundles wrapped in brown tape. The bundles were cut open to reveal a green leafy substance later identified as marijuana. A total of ten bundles of marijuana weighing 25.75 kgs lbs were discovered.

Once the marijuana was discovered, LOPEZ and SALINAS were placed under arrest for possession of marijuana with the intent to distribute. LOPEZ was asked if he preferred his rights to be read in English or in Spanish. BPA Pequeno read LOPEZ his Miranda Rights in Spanish and Border Patrol Agent Eric Rubio served as a witness during the reading. LOPEZ stated he understood his rights and signed and initialed the Miranda Rights form indicating the same. SALINAS asked for his rights to be read to him in his preferred language of English. BPA Pequeno read SALINAS his rights in English and Border Patrol Agent Luis Gudino witnessed the reading of the rights.

After LOPEZ was read his rights he stated the following: He stated that he was instructed by an acquaintance of his by the name of Jose Benavidez who lives in Reynosa, Tamaulipas, Mexico to transport a tire to Houston, Texas or he would be kidnapped if he declined. LOPEZ stated that Benavidez was going to pay him \$2,000.00. LOPEZ stated that Benavidez told him to meet him at Home Depot in Edinburg, Texas. Upon meeting him at Home Depot he followed a different individual whom he doesn't know the name to a house where they mounted the spare tire. LOPEZ stated that after he left the house he had second thoughts about transporting the tire to Houston. This is when he asked SALINAS to accompany him to visit his dad in Houston. LOPEZ also stated that SALINAS had no knowledge that the spare tire contained narcotics.

After SALINAS was read his rights he stated the following: He stated that he had no knowledge that there was any type of drugs in the truck. He stated that he was asked by LOPEZ to accompany him to visit his dad in Houston. SALINAS stated that LOPEZ asked him about 11:00 AM today if he could go with him and then picked him up around 5:00 PM. He stated that after he was picked up they only stopped at a convenience store to fuel up and buy snacks.

On 12-18-2010, S/A's Stewart and O'Neil arrived at the Falfurrias USBP checkpoint to take custody of the case. S/A Stewart read LOPEZ his Miranda Warning as witnessed by S/A O'Neil. LOPEZ signed the form indicating that he understood his rights and agreed to answer questions. LOPEZ told S/A Stewart and O'Neil the same story that he told Border Patrol pursuant to his arrest. S/A Stewart asked LOPEZ why Jose Benavidez would threaten kidnapping, yet offer to pay \$2000.00 for transporting the marijuana. LOPEZ could not provide an answer to the question.

AUSA Chad Cowan authorized prosecution of LOPEZ.

A total of ten bundles of marijuana weighing 25.75 kgs were discovered in the spare tire of the Toyota Tundra.